

3-4-2010

State v. Ball Augmentation Record Dckt. 35627

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In the Supreme Court of the State of Idaho

HERBERT A. RAYLE

Appellant

v.

STATE OF IDAHO

Respondent

A MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE SET FORTH IN SUPPORT OF THE MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE. Therefore, good cause appearing.

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE IS GRANTED and the District Court Reporter shall prepare and deliver the transcript of the proceedings in this Court within twenty calendar days of the date of the Court's decision on the motion. The transcript shall immediately serve counsel and file the transcript with the Court. The transcript shall be filed with this Court as provided by I.R. 30.1.

1. Transcript of the status hearing on the Motion to Augment and to Suspend the Briefing Schedule, 2009.
2. Transcript of the status hearing conducted on March 17, 2009, and Court Reporter Byrd's immediate estimate of pages, filed March 17, 2009.
3. Transcript of the status hearing conducted on April 1, 2009, and Court Reporter Byrd's immediate estimate of pages, filed April 1, 2009.

IT FURTHER IS ORDERED that the augmentation record shall include the documents listed below, file stamped copies of which accompanied the Motion:

1. Court minutes from the Rule 35 Motion hearing held on September 28, 2009.
2. Minutes Report and court minutes from the hearing held on March 17, 2009.
3. Court minutes from the hearing held on April 1, 2009.
4. I.C. 18-21-1 Order, file stamped April 1, 2009.
5. Order for Commitment and Treatment Pursuant to Idaho Code section 18-21-1, file stamped April 28, 2009.
6. Motion to Lift the Stay in Proceedings, file stamped July 16, 2009.
7. Order to Lift the Stay in Proceedings and Notice of Hearing, file stamped July 17, 2009, and
8. Order re Rule 35 Motion, file stamped September 30, 2009.

ORDER GRANTING MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE. Docket No. 15627-2008.

IT FURTHER IS ORDERED that the augmentation record shall include the document listed below, a copy of which was attached to this Motion in a sealed envelope, as a CONFIDENTIAL EXHIBIT:

1. Psychological Evaluation filed July 20, 2009.

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, GRANTED and proceedings in this appeal are SUSPENDED until the transcripts listed above are filed with this Court at which time the due date for filing Appellant's Brief shall be reset.

IT FURTHER IS ORDERED that this motion to augment shall be treated as Appellant's 3rd motion for extension of time.

DATED this 4th day of March, 2010.

For the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

- cc: Counsel of Record
- Idaho Court Clerk
- District Court Reporter

ORDER GRANTING MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE. Docket No. 15627-2008.

In the Supreme Court of the State of Idaho

JEFFERY A. BALL,

Appellant,

v.

STATE OF IDAHO,

Respondent.

)
) ORDER GRANTING MOTION TO
) AUGMENT AND TO SUSPEND THE
) BRIEFING SCHEDULE

)
) Supreme Court Docket No. 35627-2008
) Kootenai County District Court No.
) 2008-2022

)

A MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE AND STATEMENT IN SUPPORT THEREOF was filed by counsel for Appellant on February 12, 2010. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, GRANTED and the District Court Reporter shall prepare and lodge the transcripts listed below with this Court within twenty-eight (28) days of the date of this ORDER and the District Court Clerk shall immediately serve counsel and file the transcripts with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1:

1. Transcript of the Status hearing on the Rule 35 Motion conducted on September 28, 2009;
(Court Reporter Byrl Cinnamon)(estimate of pages: less than 100)
2. Transcript of the Status hearing conducted on March 23, 2009; and
(Court Reporter Byrl Cinnamon)(estimate of pages: less than 100)
3. Transcript of the Status hearing conducted on April 27, 2009.
(Court Reporter Byrl Cinnamon)(estimate of pages: less than 100)

IT FURTHER IS ORDERED that the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Court minutes from the Rule 35 Motion hearing held on September 28, 2009;
2. Minutes Report and court minutes from the hearing held on March 23, 2009;
3. Court minutes from the hearing held on April 27, 2009;
4. I.C. 18-212 Order, file-stamped April 1, 2009;
5. Order for Commitment and Treatment Pursuant to Idaho Code Section 18-212, file-stamped April 28, 2009;
6. Motion to Lift the Stay in Proceeding, file-stamped July 16, 2009;
7. Order to Lift the Stay in Proceeding and Notice of Hearing, file-stamped July 17, 2009;
and
8. Order re: Rule 35 Motion, file-stamped September 30, 2009.

ORDER GRANTING MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING
SCHEDULE – Docket No. 35627-2008

IT FURTHER IS ORDERED that the augmentation record shall include the document listed below, a copy of which was attached to this Motion in a *sealed envelope*, as a CONFIDENTIAL EXHIBIT:

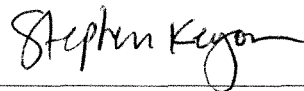
1. Psychological Evaluation filed July 20, 2009.

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, GRANTED and proceedings in this appeal are SUSPENDED until the transcripts listed above are filed with this Court at which time the due date for filing Appellant's Brief shall be reset.

IT FURTHER IS ORDERED that this motion to augment shall be treated as Appellant's 3rd motion for extension of time.

DATED this 4th day of March, 2010.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

Court Minutes:



Handwritten signature

Session: GIBLER092809P
Session Date: 09/28/2009
Judge: Gibler, Fred
Reporter: Cinnamon, Byrl

Division: DIST
Session Time: 10:59

Courtroom: Courtroom 1

Clerk(s): Hamilton, Emily

State Attorney(s):
Gardner, Donna
Laird, Terri
Wick, Ann

Public Defender(s):
Anderson, Staci
Taylor, Anne
Walsh, Sean

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: CR2008-2022

Plaintiff:

Plaintiff Attorney:

Defendant: BALL, JEFFERY

Pers. Attorney:

Co-Defendant(s):

State Attorney: Gardner, Donna

Public Defender: Taylor, Anne

09/28/2009

12:17:43

Recording Started:

12:17:43

Case called

12:18:09

Judge: Gibler, Fred

RECEIVED

JAN 04 2010

STATE APPELLATE
PUBLIC DEFENDER

Handwritten signature

12:18:42 HEARING ON MOTION TO RECONSIDER SENTENCE
DF BY TELEPHONE

12:22:42 **Public Defender: Taylor, Anne**
MOTION FOR NEW TRIAL, COMPETENCY ISSUE NOT
PROCEEDING ON.

12:23:10 NEW EVIDENCE NOW, WISH TO CONTINUE THIS HEARING

12:23:38 CAN PROCEED ON THE RULE 35 TODAY

12:24:29 RECONSIDER SENTENCE AND PLACE DF ON RETAINED
JURISDICTION

12:24:51 ALOT OF POSSIBILITY FOR REHABILITATION FOR MR.
BALL

12:25:13 **Defendant: BALL, JEFFERY**
NOTHING TO ADD

12:25:17 **State Attorney: Gardner, Donna**
NO NEW INFORMATION GIVEN TO US BY DEFENSE

12:25:46 DENY THE RULE MOTION

12:25:56 **Judge: Gibler, Fred**
RECALLT HE SENTENCING HEARING AND THE FACTS OF
THE CASE. I HAD GIVEN ALOT OF

12:26:13 THOUGHT TO THE SENTENCE.

12:26:28 FACTS OF THE CASE WARRANTED THE SENTENCE
IMPOSED. IT WAS THE APPROPRIATE

12:26:49 SENTENCE. NO BASIS FOR ME TO RE CONSIDER THE
SENTENCE.

12:27:07 DENY THE RULE MOTION.

12:27:13 STATE TO PREPARE ORDER

12:27:20 DEFENSE CAN NOTICE THE WITHDRAW OF PLEA HEARING

12:28:14 **Stop recording**



Hmc

Cable 032309A

3/23/2009

Date: 4/3/2009

Time: 11:30 AM

Page 1 of 3

First Judicial District Court - Kootenai County

User: HAMILTON

Minutes Report

Case: CR-2008-0002022

Defendant: Ball, Jeffery A

All Items

Hearing type:	Status Conference	Minutes date:	03/23/2009
Assigned judge:	Fred M. Gibler	Start time:	11:30 AM
Court reporter:	Byrl Cinnamon	End time:	11:30 AM
Minutes clerk:	Emily Hamilton	Audio tape number:	
Prosecutor:	Donna C Gardner, Deputy KCPA		
Defense attorney:	Anne Taylor, Deputy Public Defender		

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JAN 04 2010

STATE APPELLATE
PUBLIC DEFENDER

Cable 032309A

3/23/09

██████████

Time: 1:130 AM

Page 2 of 3

First Judicial District Court - Kootenai County

User: HAMILTON

Minutes Report

Case: CR-2008-0002022

Defendant: Ball, Jeffery A

All Items

J Status Conference Hearing, Ms. Gardner for state and Ms. Taylor for Defendant

DA He was transported to prison. They dont know they are suppose to be evaluating him. They didn't have the order for commitment on 210 and 212

PA only order we prepared was, court committed him to department for further evaluation and treatment, not order for commitment.

We had order for transportation and that is what we thought court wanted. It was back in September.

DA He had never been to prison yet. When we did the commitment he wanted to go to Blackfoot and state objected. It was not a secure facility. He needs the order committing him, but it has to be at the prison and not the state hospital. That is the order that is lacking

PA Court does not have jurisdiction for his status at the prison. Prison is do all this. Thought the court ordered he is to be remanded back to prison and undergo whatever treatment the prison put in effect.

DA We did file the 18-210 to determine if he was fit. Marie Parkman said he needed more and it should be done at a secure facility. The prison does not know, that is what they are to be doing, evaluate him and report on competency to proceed

PA the competency to do what

DA the competency to let his plea stand when rule 11 was not going to be followed

PA what authority

J Thought we were doing on rule 35.

DA Rule 35 is still pending

J Further evaluation was necessary. I invisioned an order that he would be evaluated on 18-210 and be transported back here for rule 35 proceedings

PA Rule 35 hasnt even been done yet

J I have jurisdiction on the rule 35 motion

PA we need order to further direct the department to do evaluation

J Need Evaluation done and have report sent back to me
Order to direct dept of corrections to do competency evaluation needs to be done by them. This is in connection with the rule 35 motion. State to prepare order.

Court Minutes:



Session: GIBLER042709A
Session Date: 04/27/2009
Judge: Gibler, Fred
Reporter: Cinnamon, Byrl

Division: DIST
Session Time: 07:25

Courtroom: Courtroom1

Clerk(s): Hamilton, Emily

State Attorneys:
Gardner, Donna
Laird, Terri
Raap, Marty

Public Defender(s):
Anderson, Staci
Neils, Martin
Taylor, Anne
Walsh, Sean

Prob. Officer(s):

Court interpreter(s):

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JAN 04 2010

**STATE APPELLATE
PUBLIC DEFENDER**

Case ID: 0005

Case Number: CR2008-2022
Plaintiff:
Plaintiff Attorney:
Defendant: BALL, JEFFERY
Pers. Attorney:
Co-Defendant(s):
State Attorney: Gardner, Donna
Public Defender: Taylor, Anne

04/27/2009

09:50:10

Recording Started:

09:50:10

Case called

09:50:45 **Judge: Judge: Gibler, Fred**
STATUS CONFERENCE HEARING, DF IS NOT PRESENT

09:51:07 **Public Defender: Taylor, Anne**
STATE NOT IN AGREEMENT WITH ORDER FROM DEPT.
RE: LAST PARAGRAPH

09:51:44 **State Attorney: Gardner, Donna**
NAME OF ORDER SHOULD BE, ORDER FOR COMPETENCY &
EVALUATION

09:51:53 **Judge: Gibler, Fred**
ORDER FOR COMPETENCY & TREATMENT, CAN DO TODAY

09:55:47 **Stop Recording**

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 4-1-09
AT 8:00 O'CLOCK A
CLERK, DISTRICT COURT
DEPU

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

JEFFERY BALL,

Defendant.

CASE NO. F08-2022

I.C. 18-212 ORDER

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JAN 04 2010

STATE APPELLATE
PUBLIC DEFENDER

The Court having received a Motion for Rule 35 from the defendant and to further review that issue in later proceedings, a competency evaluation is to be performed through the Idaho Department of Corrections pursuant to I.C. §18-22.

Therefore, in accordance with I.C. §18-212:

IF IS HEREBY ORDERED that the Idaho Department of Corrections conduct an evaluation under I.C. §18-212 on said inmate.

DATED this 31st day of March, 2009.

Fred M. Gibe
JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 1 day of April, 2009, that a true and correct copy of the foregoing were mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand Delivered, or Faxed to:

Prosecutor KC 446-1833 Defense Attorney PD 446-1407 Defendant _____
KCPSB _____ Auditor _____ Police Agency _____
Bonding Co. _____ ☒ Other Dept of Corrections 327-7445

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

BY: Daniel English, Deputy

ORDER



Hmc

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JAN 04 2010

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

**STATE APPELLATE
PUBLIC DEFENDER**

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2009 APR 28 AM 11:49

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JEFFERY BALL,

Defendant.

**CASE NUMBER CR-08-0002022
Fel**

**ORDER FOR
COMMITMENT AND TREATMENT
PURSUANT TO IDAHO CODE SECTION
18-212**

This Court having before it the determination by Marie Parkman, PhD, that Jeffery Ball is unfit to proceed, cannot assist his attorney in his defense and lacks the capacity to make informed decisions about treatment, and neither counsel for the date nor counsel for Jeffery Ball contests the report of Dr. Parkman, and good cause otherwise appearing;

THE COURT HEREBY FINDS that Jeffery Ball is unfit to proceed or to assist in his own defense, and lacks the capacity to make an informed decision regarding treatment of his mental illness.

THE COURT FURTHER FINDS that Jeffery Ball is dangerously mentally ill as defined in Idaho Code section 66-1305.

THEREFORE, in accordance with I.C. §18-212:

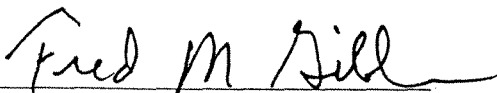
IT IS HEREBY ORDERED that proceedings against Jeffery Ball shall be suspended until such time as it is determined that he is fit to proceed.

IT IS FURTHER ORDERED that Jeffery Ball shall be committed to the custody of the director of the Idaho Department of Corrections for care and treatment at the State Secured Medical Facility as soon as space is available.

IT IS FURTHER ORDERED that within ninety (90) days, a progress report on Jeffery Ball shall be filed with the Court. Such report shall include a statement of Jeffery Ball's condition and progress at the time of the writing of the report, and it shall include an opinion on the likelihood of Jeffery Ball becoming fit to proceed within the foreseeable future. This report shall be filed in triplicate and a copy thereof provided to the prosecution and to the defense.

IT IS FURTHER ORDERED that if at any time the director of the facility to which Jeffery Ball is committed determines that Jeffery Ball is fit to proceed, such determination and the reasons underlying it, shall be immediately reported to the Court.

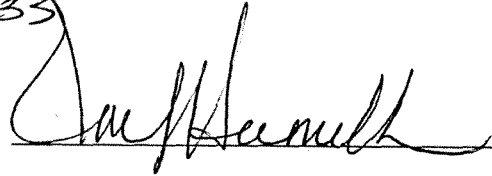
ORDERED this 27 day of April, 2009.


FRED M. GIBLER
DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the inter office mailbox on the 28 day of April, 2009, addressed to:

- ✓ Kootenai County Public Defender -446-1701
- ✓ Kootenai County Prosecutor - 446-1833
- ✓ Dr. Marie Parkman (by fax 769-1430)
- ✓ IDOC-208 327-7445



ORIGINAL



Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 7/16/09
AT 5:00 O'CLOCK P.M.
CLERK, DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JEFFERY BALL,

Defendant.

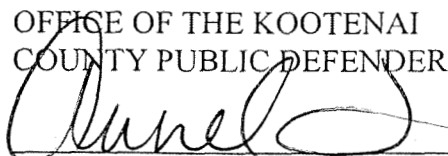
CASE NUMBER CR-08-0002022

MOTION TO LIFT THE
STAY IN THE PROCEEDING

COMES NOW, the above named defendant, by and through his attorney, Anne Taylor, Deputy Public Defender, and hereby moves the Court for a Motion and Order to lift the stay in the proceeding for the reason that the report from the Doctor indicates an 18-210 commitment is not appropriate and Mr. Ball is competent to proceed.

Counsel further requests the matter now be scheduled for the previously and timely filed Motion for Reconsideration of Sentence and Motion to Withdraw Plea.

DATED this 16th day of July, 2009.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER
BY: 
ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

MOTION TO LIFT THE
STAY IN THE PROCEEDING

RECEIVED

JAN 04 2010

STATE APPELLATE
PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 14 day of July, 2009, addressed to:

Kootenai County Prosecutor
Judge Gibler by fax

Tennager Tenquine

**MOTION TO LIFT THE
STAY IN THE PROCEEDING**

ORIGINAL

RECEIVED

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: SS

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

JAN 04 2010

STATE APPELLATE
PUBLIC DEFENDER

2009 JUL 17 PM 2:20

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

V.

JEFFERY BALL,

Defendant.

CASE NUMBER CR-08-0002022

ORDER TO LIFT THE
STAY IN THE PROCEEDING AND
NOTICE OF HEARING

The Court having before it the timely Motion to Lift the Stay in the Proceeding and good cause appearing, now, therefore

IT IS HEREBY ORDERED that Order to stay the proceeding be lifted.

IT IS FURTHER ORDERED that the Motion for Reconsideration of Sentence be scheduled for to be determined, and the Motion to Withdraw Plea be scheduled for to be determined

DATED this 16 day of July, 2009.

Fred M. Gibler

FRED M. GIBLER
DISTRICT JUDGE

CLERK'S CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was personally served by facsimile on the 17 day of July, 2009 addressed to:

Kootenai County Public Defender 208-446-1701
Kootenai County Prosecutor 208-446-1833

Jeff Hammett

ORDER TO LIFT THE
STAY IN THE PROCEEDING AND NOTICE OF HEARING

PAGE 1

ORIGIN

115
STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

SS ☐

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

SEP 30 PM 4:14

STATE OF IDAHO,

Plaintiff,

vs.

JEFFERY BALL,

Defendant.

CASE NO. CR-F08-2022

ORDER

CLERK DISTRICT COURT

DEPUTY

The above entitled matters came on for a RULE 35 MOTION before the Honorable Judge Gibler on September 28, 2009. Personally present was the Defendant and the Defendant's attorney of record, Anne Taylor. Also appearing was Donna Gardner, Deputy Prosecuting Attorney. Argument was given. Based upon such, the Court then ruled as follows:

HEREBY FINDS AND ORDERS:

That the Defendant's Rule 35 Motion is hereby denied.

DATED this 30 day of September, 2009.

Frederick M. Gibler
JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 30 day of Sept, 2009, that a true and correct copy of the foregoing were mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand Delivered, or Faxed to:

✓ Prosecutor BC-446-1833
KCPSB _____
Bonding Co. _____

✓ Defense Attorney 446-1701 Defendant _____
Auditor _____ Police Agency _____
Other _____

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

BY: Daniel English, Deputy

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JAN 04 2010

STATE APPELLATE
PUBLIC DEFENDER

ORDER